

Montana Code Annotated 2017

TITLE 90. PLANNING, RESEARCH, AND DEVELOPMENT

CHAPTER 6. COMMUNITY IMPACT -- PLANNING AND ABATEMENT

Part 3. Hard-Rock Mining Impact

Tax Prepayment -- Large-Scale Mineral Development

90-6-309. Tax prepayment -- large-scale mineral development. (1) After permission to commence operation is granted by the appropriate governmental agency and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment must exclude the 6-mill university levy established under **15-10-108** and may exclude the mandatory county levies for the school BASE funding program established in **20-9-331** and **20-9-333**.

(2) The person who is to prepay under this section is not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they are subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation.

History: En. Sec. 10, Ch. 617, L. 1981; amd. Sec. 4, Ch. 489, L. 1983; amd. Sec. 6, Ch. 582, L. 1985; amd. Sec. 48, Ch. 11, Sp. L. June 1989; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 7, Ch. 57, L. 2009.



Montana Secretary of State Corey Stapleton

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8.104.214 FINANCIAL GUARANTEE OF TAX PREPAYMENTS

(1) The financial guarantee required of a developer by [90-6-309\(3\)](#), MCA, to assure that property tax prepayments will be paid as needed by local government units must, at a minimum, meet the following requirements:

(a) The guarantee must cover the total amount of money the developer has committed to prepay with adequate provisions for any conditional payments provided for in the impact plan. Both the total amount covered by the guarantee and the specific purpose of each prepayment must be specified with sufficient clarity that it can be determined that the guarantee corresponds with and is sufficient to meet all prepayment commitments in the approved impact plan;

(b) The guarantee must make the money accessible to the board in the event of a default on the part of the developer or the need for the board to resolve a dispute between the developer and an affected local government unit; and

(c) The funds contained in the guarantee mechanism must be protected from all uses not specified in or provided for by an approved impact plan or an approved amendment to the plan.

(d) The guarantee must be provided through a financially sound third-party financial institution that is acceptable to the board and in which the developer does not have a significant financial interest.

(2) The financial guarantee must be submitted to the board in sufficient time that it may be approved by the board and be in place before mining activities under an operating permit issued by the Department of Environmental Quality commence or prior to the time an affected local government unit must incur a financial obligation in implementation of the approved impact plan and in anticipation of revenues protected by the financial guarantee, whichever occurs first.

History: [90-6-305](#), MCA; [IMP](#), [90-6-309](#), MCA; [NEW](#), 1986 MAR p. 1826, Eff. 10/31/86; [AMD](#), 1994 MAR p. 2718, Eff. 10/14/94; [AMD](#), 2008 MAR p. 945, Eff. 5/9/08.

MAR Notices	Effective From	Effective To	History Notes
8-104-66	5/9/2008	Current	History: 90-6-305 , MCA; IMP , 90-6-309 , MCA; NEW , 1986 MAR p. 1826, Eff. 10/31/86; AMD , 1994 MAR p. 2718, Eff. 10/14/94; AMD , 2008 MAR p. 945, Eff. 5/9/08.
	10/14/1994	5/9/2008	History: Sec. 90-6-305 , MCA; IMP , Sec. 90-6-309 , MCA; NEW , 1986 MAR p. 1826, Eff. 10/31/86; AMD , 1994 MAR p. 2718, Eff. 10/14/94.

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Upon receipt of the developer's written guarantee, the Board notifies the DEQ that the plan has been approved and the guarantee received.

Authority: 90-6-307, MCA; ARM 8.104.211; Board policy.

- c. If the plan requires the developer to prepay taxes, the developer must guarantee to the Board, through a third-party financial institution, that the required prepayments will be made as needed. The financial guarantee must be acceptable to the Board.

The developer submits the proposed financial guarantee to the Board for review and approval. The financial guarantee must be reviewed, approved and fully executed before activities under an operating permit issued by the DEQ commence, or prior to the time the affected local government unit incurs financial obligations in the implementation of the approved impact plan, whichever occurs first.

When the financial guarantee has been approved and executed, the Board notifies the DEQ that the developer has met the requirements of the Impact Act and that the approved plan is ready to be implemented. The developer is then in compliance with the requirements of 82-4-335(5), MCA.

Authority: 82-4-335(5) and 90-6-309(3), MCA; ARM 8.104.214.

- d. When the Board identifies a jurisdictional revenue disparity in an approved impact plan, the Board notifies the developer, the affected local government units, and the DOR. The developer, local government units and DOR implement the Tax Base Sharing Act as described in Appendix XIII.

Authority: 90-6-403, MCA.

5. IMPLEMENTATION OF AN APPROVED IMPACT PLAN: IMPACT FUND AND IMPACT PAYMENTS

Most of the procedures necessary to implement an impact plan will depend on the plan itself. The plan may impose significant expectations and requirements on the affected local government units that are to prepare for and provide the services and facilities

approved impact plan only if requested to do so by an affected local government unit.

Authority: 82-4-335, MCA; 90-6-307, MCA; Board policy.

- c. If the Board determines that the developer has failed to comply with its commitments in the approved plan or with the review and implementation requirements of the Impact and Tax Base Sharing Acts, the Board must notify the DEQ.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

- d. If notified by the Board that a permittee is not complying with its written guarantee, its commitments including the payment schedule provided in the approved plan, or with the review and implementation requirements in Title 90, Parts 3 and 4, the DEQ must suspend the developer's operating permit.

Authority: 82-4-335, MCA; 90-6-307, MCA.

- e. The permit remains suspended until the Board provides the DEQ with written notice that the permittee is again in compliance, at which time the DEQ reinstates the developer's operating permit.

Authority: 82-4-335, MCA; 90-6-307, MCA; ARM 8.104.211.

- f. If the developer fails to prepay taxes or make other payments encompassed by the financial guarantee in a timely manner, the Board may draw upon the financial guarantee to make the required payments.

Authority: 90-6-309, MCA; ARM 8.104.211 and 8.104.214.

9. IMPACT PLAN WAIVERS FOR LARGE-SCALE PERMITTEES

- a. Each mineral developer that applies for and receives a hard-rock mine operating permit on or after May 18, 1981, must send periodic employee reports to the DEQ, as required by the Department.

Both in the planning process and in the plan itself, the developer and affected local governments should consider the lead-time local governments may require in order to make additional facilities and services available when they are needed. For example, the local government may need to apply for state or federal grants or loans to upgrade community facilities or services. They may also wish to consider whether, in some instances, temporary measures would provide an acceptable transition to the permanent provision of additional facilities or services, without diminishing the existing or needed level or quality of service.

In summary, the severity and cost of potential impacts depends largely on the relative size, the number and the needs of the in-migrating population; the rate and duration of in-migration; where in-migrants reside; and the existing ability of affected communities to meet the increased demand for housing, services and facilities. The severity and cost of actual impacts also depends on the willingness and ability of the developer, the affected local government units, and the communities to work together in preparing and implementing appropriate growth management and impact mitigation strategies, including the impact plan.

5. Financial or Other Assistance from the Developer [90-6-307(1)(d), MCA; ARM 8.104.203(4)]

The impact plan must identify:

the financial or other assistance the developer will give to local government units to meet the increased need for services. [90-6-307(1)(d), MCA]

In preparing the plan, the developer and affected local government units identify the increased capital and operating costs of needed services and facilities, specifying the "project year" or "impact year" in which the cost is expected to occur. They also estimate, by year and by local government fund, the revenues that are expected to result from the mineral development without any increase in property taxes or service fees. The difference between the increased mine-generated operating revenue and the mine-generated operating cost is the net operating cost. In the plan, the developer must commit to pay all increased capital and net operating costs resulting from the mineral development. [90-6-307(1) and (2), MCA; ARM 8.104.203(4)]

The developer and local governments may have to evaluate alternatives for providing and financing the needed facilities and services. If the capacity or condition of a facility or the level of a service is inadequate to meet existing needs, or to meet needs as projected

without the mine, the developer and affected local government unit may have to apportion fiscal responsibilities between them.

The plan identifies any non-financial assistance the developer will provide. For example, the developer might assume full or partial responsibility for upgrading and maintaining the county access road to the mine, conforming to applicable standards and requirements. Or, the developer might provide additional communications equipment and joint training opportunities for county emergency services personnel. Or, in order to contain costs by encouraging concentrated rather than sprawl development or to ensure the timely availability of employee housing or developed housing sites, the developer might develop a new subdivision in a location compatible with the local growth policy and planning and zoning requirements.

In some cases, developers have chosen to assist nonprofit organizations that provide quasi-governmental services, such as rural fire protection and emergency medical services. These are services which a local government unit could provide but which are, instead, provided by volunteer entities, often with some financial assistance from a local government unit. Assistance to quasi-governmental, nonprofit organizations has included shared emergency medical training opportunities, donation of equipment, grants, and mutual aid agreements. Whether provided directly or through an affected local government unit, such assistance helps the non-profit entity to upgrade its training and equipment, while preparing and compensating it for emergency services rendered on behalf of the developer or the in-migrating population. Impact payments to a nonprofit service provider are voluntary, but the developer may commit to them in the plan. Impact payments to the local government unit that assists a nonprofit entity financially may be required by the plan, if the local government unit expects to incur increased costs to enable the non-profit entity to provide additional services needed as a result of the mineral development.

6. Developer's Commitment to Pay All Increased Capital and Net Operating Costs and the Schedule of Payment [90-6-307(2), MCA; ARM 8.104.203(4)]

In the impact plan, the developer must commit itself:

to pay *all of the increased capital and net operating cost* to local government units that will be a result of the development, as identified in the impact plan, either from tax prepayments, as provided in 90-6-309, special facility impact bonds, as provided in 90-6-310, or other funds obtained from the developer, and shall provide a time schedule

F. AFTER THE PLAN IS APPROVED: WRITTEN AND FINANCIAL GUARANTEES AND ENFORCEMENT OF COMMITMENTS

1. Written Guarantees. [82-4-335(5), 90-6-307(9) and (11), MCA]

After the plan is approved, the developer must submit a written guarantee to the Board and to the DEQ, stating that the developer will comply with all commitments made in the approved plan. When the Board receives the written guarantee, it will notify the DEQ and, if applicable, will inform the DEQ that the impact plan approval process will be complete when the developer's financial guarantee has been executed as required.

2. Financial Guarantee. [90-6-309(3), MCA; ARM 8.104.214]

If the approved plan requires the developer to prepay property taxes, the developer must provide the Board with a financial guarantee to assure that tax prepayments will be made as required by the plan. The financial guarantee must be made through a *third-party financial institution*. The guarantee must meet the basic criteria contained in ARM 8.104.214 and must be reviewed and approved by the Board. [90-6-309(3), MCA; ARM 8.104.214]

After approving the financial guarantee, the Board will notify the DEQ that the impact plan approval process is complete, provided that the developer executes the financial guarantee as required. The financial guarantee must be approved and fully executed before any activities under the mine's operating permit commence or prior to any expense being incurred by an affected local government unit in its implementation of the approved impact plan, *whichever occurs first*. [82-4-335 (5) and (6), 90-6-307(2), MCA; ARM 8.104.214(2)]

The Board will determine on a case-by-case basis what constitutes an appropriate mechanism for the third-party financial guarantee. Appendix IX provides two sample financial guarantees, a letter of credit and an escrow agreement. The plans they serve range from a plan in which all identified impact costs were expected to occur within a fifteen month period to a complex and substantially amended plan with a number of contingency provisions and an implementation period in excess of ten years.

As a quirk of legislative evolution, the Act requires a financial guarantee only for the developer's tax prepayment commitments. [90-6-309(3), MCA] However, to ensure a consistent effect, financial guarantees have also encompassed grants and contributions

when they constitute a significant part of the developer's financial obligation. Facility impact bonds require a separate guarantee as part of the bonding process, which is entered into between the governing body and the developer during the plan implementation phase. [90-6-310(2), MCA]

3. Enforcement of Commitments. [82-4-335(5) and (6), 90-6-307(14) and (15), MCA; ARM 8.104.211(3)]

The developer's compliance with its commitments in the impact plan and with the requirements of the Impact and Tax Base Sharing Acts are requirements of the statutes under which the DEQ issues the developer's operating permit. [82-4-335(5), MCA] If the developer fails to meet its commitments in the approved plan or written guarantee, or to comply with the requirements of the Impact Act or Tax Base Sharing Act, the Board is required to notify the DEQ, and the DEQ must then suspend the developer's operating permit until notified by the Board that the developer is again complying with all commitments and statutory requirements.

G. SUMMARY

Large-scale mineral developers and affected local government units must comply with the applicable impact plan preparation, review and implementation requirements and expectations of the Impact Act and the Property Tax Base Sharing Act. Both the developer and the local governing bodies are legally responsible for the content and implementation of the plan. Evaluation of the proposed impact plan during the formal 90-day review period is the responsibility of the affected governing body with the assistance of local government personnel and the affected public.

The impact plan is to identify all increased capital, operating and net operating costs for local government services and facilities needed as a result of the mineral development. [90-6-307(1)(c) and (2), MCA] In the plan the developer must commit to pay all identified, increased capital and net operating costs to affected local government units. [90-6-307(2), MCA] If the plan calls for tax prepayments, including prepayments to prepare for or evaluate the plan, it must also provide for tax crediting. [90-6-307(3), 90-6-309(4) and (5), MCA] Tax crediting is limited to the productive life of the mine and must not have the effect of shifting the increased cost over time to the non-developer local taxpayer. [90-6-301, 90-6-307(1) and (2), 90-6-309(4) and (5), MCA]

B. BEFORE THE PLAN IS IMPLEMENTED: WRITTEN AND FINANCIAL GUARANTEES [82-4-335(5), 90-6-307, 90-6-309, MCA; ARM 8.104.214]

After the plan is approved, but before it may be implemented, the developer must provide two guarantees. First, the developer must submit a *written guarantee* to both the Board and the DEQ [82-4-335(5), 90-6-307(9) and (11), MCA]. As a result of modification, negotiation or adjudication, the approved plan may differ from the plan the developer originally submitted for review. In the written guarantee, the developer reaffirms its commitment to fulfill its responsibilities under the approved plan and, in particular, to make impact payments within the time schedule specified in the plan. The DEQ may not release the mine's operating permit until the impact plan has been approved and both the Board and the DEQ have received the developer's written guarantee. [82-4-335(5), MCA] As a statutory condition of the operating permit, the developer must then comply with its commitments in the approved plan and with the requirements of the Impact and Tax Base Sharing Acts. [82-4-335, MCA]

In addition to the written guarantee, if the plan requires the developer to prepay property taxes, the developer must provide a *financial guarantee* to the Board to ensure that if the developer were to default on its commitment to prepay taxes as provided by the plan, the Board would be able to make the required payments in the developer's stead. [90-6-309(3), MCA] The financial guarantee must cover all tax prepayment commitments and may encompass grants and contributions. [90-6-309(3), MCA; ARM 8.104.214]

The developer enters into the financial guarantee through a third-party financial institution. [90-6-309(3), MCA; ARM 8.104.214] The Board evaluates and approves each proposed guarantee to ensure that it meets the basic criteria established by the Board in its administrative rules. [90-6-309(3), MCA; ARM 8.104.214] The approved guarantee must be in place before activities under the permit commence or before an affected local government unit needs to incur expenses in implementing the impact plan, whichever occurs first. [ARM 8.104.214] When the financial guarantee has been fully executed, the Board notifies the DEQ that the developer has met its pre-permit requirements under the Impact Act.

Appendices IX-A and IX-B provide examples of two types of financial guarantees, a letter of credit and an escrow agreement.

C. TIMING

Based on how long it will take local governments to have facilities and services in place when they are needed as a result of the development, the plan should identify the specific

APPENDIX IX FINANCIAL GUARANTEE REQUIREMENTS

When an approved impact plan specifies that the mineral developer will make property tax prepayments to meet impact costs, the developer must also provide the Hard-Rock Mining Impact Board with a financial guarantee. The guarantee is made through a third party financial institution and must be acceptable to the Board. [90-6-309(3), MCA]

The purpose of the financial guarantee is to ensure that the tax prepayment commitments in the approved impact plan can be met, regardless of the continued willingness or ability of the developer to meet its commitments. [90-6-301, MCA; 90-6-307(1) and (2), MCA; 90-6-309(3), MCA] The financial guarantee is a safeguard, ensuring that the burden of local government costs resulting from the development and identified in an approved impact plan is not shifted to the local taxpayer. The guarantee ensures that affected local government units will be able to meet financial obligations arising from their good-faith implementation of an approved plan, whether these obligations are incurred because of actual impact needs or anticipated needs identified in the plan. [90-6-301; 90-6-307(1) and (2); and 90-6-309(3), MCA]

Most often, a financial guarantee takes the form of a letter of credit. In one instance, when the few identified impact costs occurred during a brief impact period, an escrow account, subject to specific restrictions, served as the financial guarantee.

The Board has concluded that, at a minimum, a financial guarantee must exhibit the following characteristics or criteria:

1. The financial guarantee must be made through a reputable third-party financial institution in which the developer has no major financial interest.
2. The financial guarantee must cover the total amount of money the developer has committed to prepay at any given time, including all unmet prepayment commitments encompassed by the approved plan, its adjustments or amendments. For the adjustment provisions of an approved plan to work smoothly, the guarantee should provide reasonable additional capacity for the increased prepayments that may result from conditional "if...then" payments or adjustments.
3. The financial guarantee is made by the developer to the Board and only the Board may authorize disbursements of money through the guarantee mechanism. Release of funds or termination of the guarantee must occur

only as established in the guarantee document approved by the Board or upon authorization of the Board.

4. The money provided through the guarantee must be protected from all uses not specified or provided for in an approved impact plan, an approved amendment, or an acknowledged adjustment. (An acknowledged adjustment means that the affected parties have notified the Board in writing that they concur in the specified adjustment and the Board has acknowledged receipt of the written, signed adjustment, confirming that the adjustment is consistent with the terms of the plan and with the criteria for adjustments.)

In the guarantee document, or an accompanying document, both the total amount covered by the guarantee and the amount and purpose of each prepayment specified in the plan must be identified with sufficient clarity that the Board can readily determine that the guarantee corresponds with and is sufficient to all prepayment commitments in the approved impact plan or its amendment.

The financial guarantee must be fully executed before any activities commence under the operating permit or prior to any expense being incurred by an affected local government unit in its implementation of the approved impact plan, whichever occurs first. [82-4-335(5), MCA; 90-6-307(15), MCA; 90-6-309(3), MCA; ARM 8.104.214] The Board will notify the DEQ after approving the financial guarantee. When the financial guarantee is fully executed, the Board will notify DEQ that the impact plan approval process will be complete when the developer executes the financial guarantee.

APPENDIX IX - A

SAMPLE FINANCIAL GUARANTEES

A. **LETTER OF CREDIT.** The following sample letter of credit may be modified to fit individual impact plans. The letter of credit, modified as appropriate, may serve as a financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

LETTER OF CREDIT

NAME OF BANK
MAILING ADDRESS
CITY, STATE, ZIP CODE

DATE ISSUED: _____
IRREVOCABLE DOCUMENTARY CREDIT NO. _____

BENEFICIARY:
Hard-Rock Mining Impact Board
Montana Department of Commerce
301 South Park Avenue
Helena, MT 59601

APPLICANT:
Developer (Corporation) on behalf of
(Mining Company), (Company Address),
(City, State, Zip Code)

EXPIRES ON: (Date impacts are expected to cease)

We hereby issue in your favor our Irrevocable Standby Letter of Credit No. _____ which is available by your drafts drawn on us at sight up to an amount of \$ (Total Amount of Tax Prepayments). Your draft must be accompanied by your signed and dated statement referring to (Bank Name) and (Letter of Credit No. _____) as follows:

The undersigned, a duly appointed member of the Hard-Rock Mining Impact Board, acting in his/her official capacity, hereby certifies that: (Mining Company) has failed to pay the Montana Hard-Rock Mining Impact Board the amount of (Tax Prepayment Amount Due) Dollars (\$_____), lawful money of the United States for the use and benefit of the governing body of an affected local government unit, the property tax prepayments for expenditures created by the impacts of the large-scale mineral development to be constructed or located within the State of Montana by the (Mining Company), as required by Section 90-6-309, MCA, and by the property tax prepayment schedule contained in the Hard-Rock Mining Impact Plan dated (Date of Plan) prepared by (Mining Company) and approved as of (Plan Approval Date).

A draft from the Board may be presented and negotiated until the above sum is paid, until the Bank has obtained approval from the Board to release this letter, or until the letter terminates on (Specified Date at End of Impact Period), whichever occurs sooner, at which time this obligation will be null and void.

PARTIAL DRAWINGS ARE PERMITTED

All drafts must be marked: "drawn under (Name of Bank, Credit No. _____)" (indicate the name and date of this Standby Letter of Credit) and the amount drawn will be endorsed by us.

Unless otherwise expressly stated, this Standby Letter of Credit is subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce Publication No. 400. We hereby engage with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Standby Letter of Credit that these drafts will be duly honored by the above drawee.

NAME OF BANK

Authorized Signature

Date

B. ESCROW AGREEMENT. The following sample escrow agreement may be modified to fit individual impact plans. The escrow agreement, with appropriate modifications, may serve as the required financial guarantee insuring that tax prepayments will be provided to pay for services and facilities when and where needed according to the impact plan.

ESCROW AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 19____, between (Mineral Developer), of (Town), (State), hereafter referred to as (Developer); and (Financial Institution) of (Town), (State), hereafter referred to as (the Bank); and the Montana Hard-Rock Mining Impact Board, an agency of the State of Montana, Helena, Montana, hereafter referred to as "the Board."

WITNESSETH:

WHEREAS, the Developer is developing mineral properties in _____ County, Montana, and desires to establish an escrow account with the Bank to comply with the terms and conditions of the Hard-Rock Mining Impact Act, Sections 90-6301, et seq., MCA;

WHEREAS, the Bank agrees to the establishment of the escrow account and to the holding and disbursement of such funds in accordance with the terms of this agreement; and

WHEREAS, the Board has accepted this escrow agreement in satisfaction of the requirement of Section 90-6-309(3), MCA, that a large-scale mineral developer guarantee that property tax prepayments called for by an approved hard-rock mining impact plan, including any approved amendment to the impact plan, will be paid as needed for expenditures created by the impacts of the mineral development.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Establishment of Account. The Developer will deposit in an escrow account with the Bank the sum of (Amount of Tax Prepayment) (\$_____), as the initial deposit of impact funds. The fund balance will be reviewed on a quarterly basis, or more frequently if necessary, and the Developer will replenish the fund as required to meet its commitments under the Impact Act. The escrow account will hold funds pledged as tax prepayments (and other commitments for donations and grants).

2. Duration of the Escrow Account. The initial funds will be deposited by the Developer in the escrow account within _____ business days of the date the Developer receives its operating permit from the Montana Department of Environmental Quality. The parties estimate that the initial funding date will be approximately _____, 19____. The escrow account will continue to exist until the impact period terminates or until the Developer's tax prepayment commitments specified in the impact plan have been met, whichever is later, as certified by the Board. Before the end of the impact period and before approving the termination of the escrow account, the Board will notify Developer and the affected jurisdictions that the account is to be terminated and that within _____ days the affected jurisdictions must notify the Board of any pending claims or anticipated requests for tax prepayments from that account or forfeit the right to receive payment from the account.

3. Fees Paid to the Bank. The Developer agrees to pay the Bank the sum of \$_____ as an initial setup charge for the escrow account, and the sum of \$_____ for each disbursement made from the escrow account. The Bank will bill the Developer for its services and the Developer will pay the Bank within _____ days of the date of invoice.

4. Interest Bearing Account. The escrow account will bear interest and all interest earned thereby will be the property of the Developer and may be withdrawn by the Developer at any time. Otherwise, the Bank will not withhold monies or make payments from the account except as authorized herein for payments to the affected jurisdictions identified in paragraph 5 below made in accordance with the impact plan or as directed by the Board in resolution of disputes, or to the Developer as directed by the Board at such time as the Board determines that the Developer is released from further obligations under this agreement.

5. Affected Jurisdictions. The following governmental and public agencies are eligible to receive tax prepayments or potential prepayments from this account in accordance with the impact plan: (List here the local government units listed in the impact plan. Example below.)

- | | | |
|-----|-------|-----------------------------------|
| (a) | _____ | County |
| (b) | _____ | Town |
| (c) | _____ | High School District #_____ |
| (d) | _____ | Elementary School District #_____ |
| (e) | _____ | Elementary School District #_____ |

6. Maximum Allowable Payments. Each of the affected jurisdictions above is entitled to receive impact assistance payments up to the maximum amount shown below:

(Specific to individual impact plan)

7. Procedures of Distribution of Impact Plan Payment. The following procedures will be followed by the parties for the application and distribution of payments from the escrow account:

- (a) The affected jurisdiction will submit a written request to the Developer with a copy to the Bank and the Board, providing the information specified on the "Request for Payment" form appended to this escrow agreement as Attachment A.
- (b) For each request for an impact payment for which a maximum amount is specified above, the Bank shall make disbursements directly to the County Treasurer, _____ County Courthouse, _____, Montana, to be deposited in the impact fund of the affected jurisdiction. These payments will be made no sooner than _____ days but within _____ days of the Bank's receipt of the funding request, except as provided below.
- (c) With _____ days of its receipt of a fund request, the Developer may object in writing to the Bank, the Board and the affected jurisdiction, questioning all or a portion of the request. If an objection is made, the Bank will not disburse that portion of the requested payment to which an objection has been made until the Bank has been notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Bank will make payment in resolution of the dispute as is directed by the Board.
- (d) In the event that an affected jurisdiction submits a request for payment for a purpose or an amount that appears not to be authorized by the impact plan, the Developer or the Board may object in writing to all affected parties within _____ days of receipt of notice of the payment request. Upon receipt of such an objection, the Bank will withhold the requested payment until it is notified in writing by the Board that the dispute has been resolved by the parties or that a final decision has been made by the Board. The Board will authorize only such impact payments as are specified in or provided for by the impact plan, or an approved amendment to the impact plan.
- (e) When any payment is made by the Bank to an affected jurisdiction, the Bank will notify the Developer and the Board of the payment, providing the information specified on the "Payment" form appended to this escrow agreement as Attachment B.

8. Notices. Any notices required to be given pursuant to the terms of this agreement will be delivered personally or mailed by first class mail, postage prepaid, to the parties at the following addresses:

- (a) Developer (Name and Address)
- (b) Bank Representative (Name and Address)
- (c) Administrative Officer, Hard-Rock Mining Impact Board, Montana Department of Commerce, 301 South Park Avenue, P. O. Box 200523, Helena, MT 59620.

9. The Bank's Duties. In performing its duties under this escrow agreement, the Bank's liabilities and responsibilities will be limited and defined as follows:

- (a) The Bank need not inquire into the authorization, execution, genuineness, accuracy, validity, legality or binding effect of any notices delivered to it pursuant to this escrow agreement, so long as such document appears on its face to meet any requirements set forth in this escrow agreement, and purports to be signed by a proper person identified in the appended list of authorized signatures.
- (b) The Bank may employ attorneys for the reasonable protection of this escrow agreement and itself. Should the Bank be made a defendant in any suit by any party to this escrow agreement, or any other party, the cost of such suit, including attorney's fees, may be received from the Developer.

10. Amendment or Termination. This agreement may be amended or terminated only upon the written consent of the three parties hereto and as provided in paragraph 2. The Developer hereby acknowledges that if, for any reason, this agreement fails to guarantee adequately the tax prepayments required of the Developer under the impact plan or its approved amendment, the Developer remains responsible for making these payments under Section 90-6-307, MCA.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

DEVELOPER

BY: _____

Title: _____

BANK

BY: _____

Title: _____

HARD-ROCK MINING IMPACT BOARD

BY: _____

Board Chairman